

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

AMERICAN POSTAL WORKERS UNION,
LOCAL 566

and

Case 11-CB-3832

MICHAEL RENTZ, an Individual

Jasper C. Brown, Jr., Esq., for the General Counsel.
Anton G. Hajjar, Esq., for the Respondent.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Charleston, South Carolina, on January 17, 2008, pursuant to a complaint that issued on November 30, 2007.¹ The complaint alleges that the Respondent Union denied the request of Charging Party Rentz to change his work schedule for his own personal convenience in violation of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act. The Respondent's answer denies any violation of the Act. I find that the Respondent did not violate the Act and shall recommend that the complaint be dismissed.

The parties waived the filing of briefs and argued orally. On the entire record, including my observation of the demeanor of the witnesses and after considering the oral arguments of the General Counsel and the Respondent, I make the following²

Findings of Fact

I. Jurisdiction

The Respondent admits, and I find and conclude, that the Board has jurisdiction over the United States Postal Service pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209, that American Postal Workers Union, Local 599, the Union, is a labor organization within the meaning of Section 2(5) of the Act, and that the Board has jurisdiction over this matter.

¹ All dates are in 2007 unless otherwise indicated. The charge was filed on September 20 and amended on November 29.

² The transcript references to "Tour 4-B" and the "Gainesville" arbitration award are hereby corrected to "204(b)" and "Gamser." Contrary to the statement at page 147 of the transcript, General Counsel's Exhibit 7 was not received.

II. Alleged Unfair Labor Practices

A. Overview

5 This case relates to the denial by the Union of the request of Charging Party Michael Rentz to change his schedule for his personal convenience. Denials of such requests have been the subject of several Board decisions. Requests are made on a PS [Postal Service] Form 3189 which has a box signifying the approval of a union representative prior to submission of the PS Form 3189 to the Postal Service supervisor for approval. Article 8.4.B of the Joint Contract Interpretation Manual relating to “Out of Schedule Premium,” pay at the overtime rate for employees working outside their regular schedule, provides, in pertinent part as follows:

15 When a full-time employee temporarily changes his/her regularly scheduled work hours/days for the employee’s own convenience, management is not required to pay out of schedule premium when a change in a full-time employee’s schedule meets all three of the following conditions:

- 20 1. The requested change in schedule is for the personal convenience of the employee, and not for the convenience of management.
2. The employee has signed a PS Form 3189, *Request for Temporary Schedule Change for Personal Convenience*.
- 25 3. Management and the union’s representative (normally the certified steward in the employee’s work location) agree to the change and both sign the Form 3189.

30 On August 22, employee Linda Perry, a postal clerk who worked full time in the registry, the section that processes registered mail, was suspended following a fitness for duty examination. On August 29, the Union filed a grievance on her behalf. The grievance was denied at the first step. On September 4, the Postal Service and Union agreed to hold the grievance in abeyance until Perry was returned to duty or approved for disability retirement. Perry’s shift on Tour 1 began at 12:01 a.m., and she had Saturdays and Sundays off. The Postal Service, in order to cover her position, would have to assign an employee to her schedule which would necessitate paying the assigned employee out of schedule premium.

35 Rentz submitted a change of schedule for his personal convenience pursuant to which he would assume Perry’s position and, as provided by Article 8.4.B, if approved, the Postal Service would not be obligated to pay out of schedule premium. The Union denied his request. Notwithstanding the denial, the Postal Service placed Rentz in Perry’s position. The Union filed two grievances, and Rentz was awarded a total of \$331.80 in out of schedule premium pay.

40 The complaint alleges that the denial of Rentz’s request was unfair, arbitrary, invidious, and a breach of its duty of fair representation as well as an attempt to cause the Postal Service to discriminate against him in violation of Section 8(b)(1)(A) and (2) of the Act.

B. Facts

In 2007, Charging Party Rentz was working as manual clerk on the priority mail pouch and as a substitute in the registry section. His shift began at 10:30 p.m., and he was off on Sunday and Monday. The foregoing schedule caused him to have to take annual leave in order to attend his sons’ football games, high school games on Friday night and Newberry College games held on Saturday in Columbia, South Carolina, which is over 100 miles from Charleston.

On September 10, following the suspension of registry clerk Perry, Rentz approached Manager of Distribution Cynthia Hickman and inquired whether he could change his schedule so that he could work the shift of suspended clerk Perry, which would give him Saturdays and Sundays off thereby enabling him to attend his sons' ball games without taking leave. Manager Hickman said that she would look into it.

Union President Richard Riesmeyer recalls that, on September 12, Manager Hickman approached him and told him that she was going to send Rentz over to get a schedule change form signed "so he could fill in for Linda Perry while she was gone." Riesmeyer responded that he did not think "we [the Union] could do that, because it was for management's convenience." Hickman recalls speaking with Riesmeyer on behalf of Rentz on September 10, the day he initially approached her. She acknowledges informing Riesmeyer that Rentz was going to request a change of schedule "for the days off," and that Riesmeyer responded, "What? No." I credit Riesmeyer's recollection of the conversation. Both versions of the conversation establish that Hickman, not Rentz, first mentioned a change of schedule to the Union and that, with no reference to Rentz, Riesmeyer stated that the Union would not approve the request that Hickman had stated would be to "fill in for Linda Perry."

On September 13, Rentz spoke again with Hickman about a schedule change, and she informed him that she had spoken to the Union and that "the Union wasn't going to sign off on the 3189." Rentz requested "union time" and went to speak with President Riesmeyer in the office used by the Union at the facility. Walter Smith, a steward with the Mail Handling local, was in the office and overheard "bits and pieces" of the conversation. Riesmeyer recalls that Rentz requested the change of schedule for personal convenience that would change his schedule to that formerly worked by suspended employee Perry. Riesmeyer denied the request explaining that it was "primarily for management's convenience, so I couldn't approve it." Rentz repeated that "it would be good for him [Rentz] too." Riesmeyer informed him that it was his decision but that he, Rentz, could call the National Business Agent in Tampa, Florida, and he gave him the number. Rentz "left in a huff." Rentz recalled explaining his need to be off on Friday night and Saturday because of his sons' football games. He testified that Riesmeyer simply stated that he was not going to sign it, that it was his decision. When he, Rentz, protested and argued that there had to be somebody at a higher level that he could speak with, Riesmeyer finally gave him a telephone number, checked the "disapproved" block on the Form 3189, and walked out. Both Riesmeyer and Rentz agree that they were speaking loudly.

Walter Smith confirms that both were speaking loudly. Although neither Riesmeyer nor Rentz testified to any implied accusation, Smith recalls that Rentz asked Riesmeyer whether he was denying the request for a personal reason, and that Riesmeyer stated that he felt that the request "was for management." Smith did not testify that Riesmeyer walked out. Smith's testimony corroborates that of Riesmeyer regarding the fact that he specifically informed Rentz of the reason for the denial of the schedule change—that it "was for management"—and fails to corroborate the testimony of Rentz that Riesmeyer walked out. I credit Riesmeyer and Smith.

Rentz and Riesmeyer agree that they ignore each other. Although not affirmatively hostile, they would not speak if they passed one another in a hall. In 2003 or 2004, when Rentz was serving as a Section 204(b) temporary supervisor, he denied the request of Riesmeyer for immediate "union time" because of the workload at the time of the request. It is uncontested that the requested time was later given to Riesmeyer, and there is no evidence that a grievance was filed. Rentz was at that time and continues to be a member of the Union. The General Counsel presented employee Nico Gonzales, who works with Riesmeyer, who offered his opinion that Riesmeyer and Rentz "don't like each other," noting that Riesmeyer had

commented to him that he did not like Rentz and, on one unidentified occasion, had “kicked him out of the union office.” Rentz reported no such occasion, citing his denial of “union time” to Riesmeyer as the only incident between them prior to September 13. Riesmeyer testified that he and Rentz had no relationship. He recalled the denial of “union time,” but placed it in 2005 and explained that the denial “wasn’t really a triggering incident. We just never talked much at all.” There is no evidence contradicting that testimony, and I credit it.

After Rentz’s request for a change of schedule was denied, he informed Manager Hickman of that fact. Either at that time, or sometime later during his shift, Rentz presented Hickman with a letter dated September 13 in which he states his desire, for personal convenience, to “assume the duties” of suspended employee Perry, and he acknowledges that he “will forfeit any out of schedule premiums” to which he would be entitled. After speaking with Hickman, Rentz approached his steward, Cassandra Calloway, with regard to his request. Calloway informed him that she had been told by Riesmeyer that only officers of the Union had authority to grant change of schedule requests on behalf of the Union. Later that evening he requested Clerk Route Director Myra Moore, a member of the Executive Committee of the Union, to intervene on his behalf. Moore reported to him that Riesmeyer had told her that he would not approve the requested schedule change because “it benefits management.”

The uncontradicted testimony of Riesmeyer establishes that a prior president of the Union established an unwritten protocol that all requests for voluntary schedule changes be approved by an officer of the Union. Although, as documents presented by the General Counsel establish, this protocol was sometimes not honored, the fact that Rentz initially presented his request to Riesmeyer rather than to his steward, Calloway, suggests that he was aware of that protocol. Riesmeyer acknowledges that, after Rentz “left in a huff,” he suspected that Rentz might seek to obtain approval from someone else and reminded the stewards of the protocol.

Notwithstanding the absence of approval by the Union, Manager Hickman assigned Rentz to the schedule formerly worked by suspended employee Perry. She explained that she “went ahead and signed off” on the change because “management either approves or disapproves” and “it didn’t matter to me.” Manager Hickman acknowledged that the year before, in 2006, she and other managers had solicited volunteers to come in early in order to reduce overtime and that the Union had filed a grievance. She distinguished that situation on the basis of the fact that the Postal Service had solicited those volunteers whereas, in this case, Rentz had initially approached her. She acknowledged that, in both situations, the employees wanted to have the changed schedules and the Postal Service would benefit from the change.

Although the request of Rentz for a schedule change was for 30 days, until October 12, he actually worked Perry’s schedule until October 24. The Union filed two grievances protesting the assignment of Rentz to Perry’s schedule that resulted in him being paid a total of \$331.80 in out of schedule premium and, on October 24, he was returned to his original schedule. Rentz did not request that the grievances resulting in the payment of out of schedule premium be filed. There are no complaint allegations relating to the filing of the grievances or the return of Rentz to his regular schedule.

Rentz, when asked whether it was his belief that, because the request for the schedule change “was, in fact, for your personal convenience that’s all the Union needed to know[,] it was required to approve your request,” answered, “Yes, sir.”

Riesmeyer explained that he denied Rentz’s request because, although the personal convenience aspect of Rentz’s request was undisputed, it was “clear from my discussions with Cynthia Hickman and from knowing the situation with Linda Perry that the specific purpose of

this was to back-fill her position” so that the Postal Service would not have to pay out-of-schedule premium. He confirmed that the action he had taken was appropriate with National Business Agent Patricia Davis-Weeks, and he also presented the issue to the Executive Board of Local 599 which approved his action.

Rentz called the number of the National Business Agent that Riesmeyer gave him and, after playing telephone tag, spoke with National Business Agent Davis-Weeks. Rentz explained the personal reasons for his request. He recalled that Davis-Weeks explained that she relied upon what the local officers reported to her, and he concluded that, “what I got ... when I was talking to her was nothing.” Davis-Weeks recalled that, after Rentz explained the reasons for his request, he complained that he felt that Riesmeyer had denied the request “because he just simply didn’t like him.” Davis-Weeks attempted to explain the management convenience aspect of the situation, and Rentz responded that he had not been solicited, it was he who had approached management. Davis-Weeks tried to explain that “it really didn’t make a difference who approached who.” She noted that Riesmeyer’s confirming with her that his action had been appropriate “did not fit the profile of somebody that’s just doing it just simply because you don’t like them.” I credit Davis-Weeks both upon her more clear and complete recollection of the conversation as well as her impressive demeanor.

Davis-Weeks, at the hearing, explained the rationale of the Union as follows:

[It is] our obligation as officers of the Union to enforce the contract. ... [E]ven if ... as it is [in this case] ... an undisputed fact ... that it [the request for a schedule change] is at the employee's personal convenience, if it is ... going to be at management's convenience, meaning that they could put him in the slot without paying out of schedule pay and fill a vacancy that they created ... without paying out of schedule pay, it would be our obligation to not only deny it, but in this case, as when the employee was placed in it without signatory to [by] the Union, to file [a grievance] even if the grievant didn't want us to file, to get out of schedule pay to enforce it.

We are not allowed to violate the contract. Whether we agree with the contract or not, once it's signed, ... [w]e have to enforce it.

Union Vice-President Robert Deveau testified that, over the years, he had approved over 900 requests for temporary changes of schedule for personal convenience and could not recall ever having denied such a request. He acknowledged that he had never approved a request in any circumstance upon when he had any indication “that management was benefiting from the request.”

C. Analysis and Concluding Findings

The complaint alleges that the denial of the request of Charging Party Rentz to change his work schedule for his own personal convenience was unfair, arbitrary, invidious and a breach of its duty of fair representation in violation Section 8(b)(1)(A) of the National Labor Relations Act and was an attempt to cause the Postal Service to discriminate against him in violation of Section 8(a)(3) of the Act, thereby violating Section 8(b)(2) of the Act.

The General Counsel argues that the denial was motivated by President Riesmeyer’s hostility towards Rentz that had its genesis on the occasion that Rentz, when a temporary supervisor, had denied his request for “union time.” The General Counsel points to Riesmeyer's communicating with steward Calloway as confirmation of this hostility that resulted in the Union acting in an arbitrary manner in violation of the Act. Although the Postal Service approved the

change of schedule notwithstanding the absence of approval by the Union, the General Counsel argues that the absence of approval by the Union attempted to cause the Postal Service to discriminate against Rentz in violation of Section 8(a)(3) of the Act.

5 The Respondent admits that there is “coolness” between Riesmeyer and Rentz but that the argument that this constitutes hostility stemming from an incident several years ago is “far fetched.” The Respondent argues that there is no evidence that the denial of the requested schedule change related to union activity and that, therefore, the Section 8(b)(2) allegation must be dismissed. Regarding the Section 8(b)(1)(A) allegation, the Respondent argues that
10 Riesmeyer did not apply the contract in an improper manner out of personal animosity. Rather, the Union, which had on September 4 placed the grievance regarding Perry in abeyance, denied Rentz’s requested schedule change because it would back-fill her position, thereby avoiding paying out of schedule premium. The Respondent contends that there was nothing sinister in Riesmeyer’s reminding the stewards of the protocol regarding approval of change of
15 schedule requests in order to assure that they would not “be undermining his decisions.” The Respondent points out that acceptance of the position of the General Counsel, that the Union should have approved Rentz’s request thereby waiving out of schedule premium pay, would result in the Union being required to facilitate “management’s ability to make do without the employee they unjustly removed.”

20 Although the General Counsel characterized the relationship between Rentz and Riesmeyer as hostile, the evidence establishes that the relationship is more properly described as one of indifference. There were no threats or arguments. Although a member of the Union, Rentz did not attend meetings. He did not compete for any union office against Riesmeyer. I
25 have difficulty attributing Riesmeyer’s denial of Rentz’s request for a change of schedule to retaliation for an incident several years ago, especially considering that no grievance was filed over the initial denial of Riesmeyer’s request for “union time” and that it is undisputed that the time was thereafter granted. Accepting the General Counsel’s appellation of “incident” to the denial of “union time,” there was no other “incident,” nor is there evidence of any further
30 interaction between Riesmeyer and Rentz. I have credited the testimony of Riesmeyer that the foregoing “wasn’t really a triggering incident. We just never talked much at all.”

 Rentz believed that he was entitled to the change of schedule upon showing that it was for his personal convenience. The Union presented persuasive evidence that, as of September
35 13, there were countervailing considerations: a pending grievance filed on behalf of Perry and the undisputed fact that the Postal Service, having suspended Perry, would have to pay the out of schedule premium to whomever was placed in her position. The granting of Rentz’s request, which would have waived payment of that premium, would clearly be of benefit to the Postal Service. Prior to Rentz submitting the request, Supervisor Hickman informed Riesmeyer that
40 Rentz would be submitting a request for a schedule change. Riesmeyer’s immediate response that he did not think “we [the Union] could do that, because it was for management’s convenience” belies any calculated or discriminatory action relating to Rentz. Riesmeyer’s contemporaneous statement of the rationale for his absence of approval, “management’s convenience,” is fully consistent with his testimony that the Union did not want the Postal
45 Service to “back-fill” the position. Rather, the Postal Service should have to pay the out of schedule premium in order to cover the position of the employee that it had suspended.

 I agree with the Respondent that there was no impropriety in Riesmeyer’s reminding stewards that officers approved change of schedule requests after Rentz left his office “in a huff” in order to assure that his decision was not undermined. Inconsistent decisions and conflicting actions by different union officials can and do have unforeseen consequences. See *United States Postal Service*, 240 NLRB 1198 (1979).

Counsel for the General Counsel argues that the decision of the Board in *United States Postal Service*, supra, supports the finding of a violation. In that case, an employee's request for a 60 day change of schedule for personal convenience was approved by the union's general president. The approval was revoked by the clerk craft president because it exceeded 30 days. In finding a violation, the Board held that the sole reason for the revocation of approval was the desire of the clerk craft president "to enforce his personal policy of limiting temporary assignments to 30 days—a policy which had not been adopted by the Union." Id at 1199. This case does not relate to enforcement of any personal policy of Riesmeyer. The denial was predicated upon the Joint Contract Interpretation Manual which specifically provides that the "requested change in schedule is for the personal convenience of the employee, and *not for the convenience of management*." [Emphasis added.]

The Respondent argues that the Board decision in *American Postal Workers (Postal Workers)*, 283 NLRB 722 (1987), is more applicable to the situation herein. In that case, the union, consistent with a policy adopted by the membership, instituted a policy of noncooperation in response to management's "take back" effort regarding local practices related to seniority which affected leave, overtime, and holiday scheduling. Pursuant to that policy, the union denied the request of an employee who sought a schedule change in order to participate in the management sponsored Combined Federal Campaign. The judge's decision, approved by the Board, held that the denial of the employee's schedule change request was consistent with the policy of the union and was not applied in an arbitrary or discriminatory manner.

In determining whether a union has breached its duty of fair representation, "the Board's responsibility 'is not to interpret the pertinent contract provisions and determine whether the Union's interpretation [of the contract] was correct. Rather, our responsibility is to determine whether the Union made a reasonable interpretation ... or whether it acted in an arbitrary manner.'" *Auto Workers Local 651 (General Motors Corp.)*, 331 NLRB 479, 480 (2000).

The Board, in *Stage Employees IATSE Local 720 (AVW Audio Visual)*, 332 NLRB 1 (2000), citing decisions of the Supreme Court, set forth the following standard when determining whether the conduct of a union is arbitrary:

[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonable " ... as to be irrational. Id. at 2.

The General Counsel claims that Rentz was entitled to approval of his request for a schedule change upon establishing that it was for his personal convenience.

The Respondent contends that the Union was duty bound to protect the interest of all of the members of the bargaining unit by assuring that the Postal Service paid out of schedule premium to the employee who performed Perry's work until her position was posted for bid and that Rentz had no right to waive the payment of that premium by agreeing to work Perry's position pursuant to a change of schedule for personal convenience that the Union had not approved. I concur. Manager Hickman's erroneous assertion that "management either approves or disapproves," notwithstanding the provisions of Article 8.4.B of the Joint Contract Interpretation Manual which requires that both "[m]anagement and the union's representative ... agree to the change," stands in stark contrast to the testimony of National Business Agent Davis-Weeks acknowledgement that "[w]e are not allowed to violate the contract. Whether we agree with the contract or not, once it's signed, ... [w]e have to enforce it."

There is no probative evidence that that the denial of the request of Rentz for a schedule change was an attempt to have the Postal Service discriminate against Rentz because of union activity or a lack of union activity in violation of Section 8(a)(3) of the Act. I shall recommend that the Section 8(b)(2) allegation be dismissed.

The General Counsel failed to establish that the denial of the requested schedule change was made for any unfair, arbitrary, or invidious reason or that it breached the Union's duty of fair representation. The denial of the request was consistent with the position of the Union that the Postal Service should not be permitted to back-fill the vacancy it had created by suspending employee Perry, on whose behalf a grievance was pending. The granting by the Postal Service of the grievances filed by the Union that resulted in the payment of out of schedule premium to Rentz confirms that the schedule change unilaterally given by Manager Hickman violated the contract. The Union did not act in any manner that was "irrational." I shall recommend that the Section 8(b)(1)(A) allegation be dismissed.

Conclusions of Law

The Respondent Union did not violate the National Labor Relation Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The complaint is dismissed.

Dated, Washington, D.C., February 13, 2008.

George Carson II
Administrative Law Judge

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.